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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

—00000—

5 3685 SAN FERNANDO LENDERS, LLC, a
6 Nevada limited liability company, 5055
7 COLLWOOD LENDERS, LLC, a Nevada
8 limited liability company, 6425 GESS
9 LENDERS, LLC, a Nevada limited liability
10 company, 60th STREET VENTURES
11 LENDERS, LLC, a Nevada limited liability
12 company, AMESBURY HATTERS PT
13 LENDERS, LLC, a Nevada limited liability
14 company, ANCHOR B LENDERS, LLC, a
15 Nevada limited liability company, BAR-USA
16 LENDERS, LLC, a Nevada limited liability
17 company, BAY POMPANO LENDERS, LLC,
18 a Nevada limited liability company,
19 BINFORD LENDERS, LLC, a Nevada limited
20 liability company, BROOKMERE LENDERS,
21 LLC, a Nevada limited liability company,
22 BUNDY CANYON 2.5 LENDERS, LLC, a
23 Nevada limited liability company, BUNDY
24 CANYON 5.0 LENDERS, LLC, a Nevada
25 limited liability company, BUNDY CANYON
26 5.725 LENDERS, LLC, a Nevada limited
27 liability company, BUNDY CANYON 7.5
28 LENDERS, LLC, a Nevada limited liability
company, CABERNET LENDERS, LLC, a
Nevada limited liability company, CASTAIC
II LENDERS, LLC, a Nevada limited liability
company, CASTAIC III LENDERS, LLC, a
Nevada limited liability company,
CHARLEVOIX LENDERS, LLC, a Nevada
limited liability company, CLEAR CREEK
PLANTATION LENDERS, LLC, a Nevada
limited liability company, COM VEST
LENDERS, LLC, a Nevada limited liability
company, COPPER SAGE II LENDERS,
LLC, a Nevada limited liability company,
CORNMAN TOLTEC LENDERS, LLC, a
Nevada limited liability company, DEL
VALLE LIVINGSTON LENDERS, LLC, a
Nevada limited liability company, EAGLE
MEADOWS LENDERS, LLC, a Nevada
limited liability company, FIESTA
MURIETTA LENDERS, LLC, a Nevada
limited liability company, FIESTA USA
STONERIDGE LENDERS, LLC, a Nevada
limited liability company, FOX HILLS 216
LENDERS, LLC, a Nevada limited liability

**Case No. 2:07-CV-892-RCJ-GWF-BASE
AND**

Case No. 3:07-CV-241-RCJ-GWF

**SECOND AMENDED COMPLAINT
FOR DECLARATORY RELIEF AND
DAMAGES**

JURY DEMAND

1 company, GRAMERCY COURT LENDERS,
2 LLC, a Nevada limited liability company,
3 HARBOR GEORGETOWN LENDERS, LLC,
4 a Nevada limited liability company,
5 HESPERIA LENDERS, LLC, a Nevada
6 limited liability company, HFA CLEARLAKE
7 I LENDERS, LLC, a Nevada limited liability
8 company, HFA CLEARLAKE II LENDERS,
9 LLC, a Nevada limited liability company,
10 HUNTSVILLE LENDERS, LLC, a Nevada
11 limited liability company, LA HACIENDA
12 LENDERS, LLC, a Nevada limited liability
13 company, LAKE HELEN PARTNERS
14 LENDERS, LLC, a Nevada limited liability
15 company, LERIN HILLS LENDERS, LLC, a
16 Nevada limited liability company,
17 MARGARITA ANNEX LENDERS, LLC, a
18 Nevada limited liability company, MARLTON
19 SQUARE I LENDERS, LLC, a Nevada
20 limited liability company, MARLTON
21 SQUARE II LENDERS, LLC, a Nevada
22 limited liability company, MOUNTAIN
23 HOUSE-PEGS LENDERS, LLC, a Nevada
24 limited liability company, OAK SHORES II
25 LENDERS, LLC, a Nevada limited liability
26 company, OCEAN ATLANTIC 2.75
27 LENDERS, LLC, a Nevada limited liability
28 company, OCEAN ATLANTIC 9.425
LENDERS, LLC, a Nevada limited liability
company, PALM HARBOR I LENDERS,
LLC, a Nevada limited liability company,
SHAMROCK TOWER LENDERS, LLC, a
Nevada limited liability company, SO CAL
LAND LENDERS, LLC, a Nevada limited
liability company, STANDARD PROPERTY
HOLDINGS, LLC, a Nevada limited liability
company, TAPIA RANCH LENDERS, LLC,
a Nevada limited liability company, TEN
NINETY 4.15 LENDERS, LLC, a Nevada
limited liability company, THE GARDENS
2.425 LENDERS, LLC, a Nevada limited
liability company, THE GARDENS TSHR
LENDERS, LLC, a Nevada limited liability
company, CHARLES B. ANDERSON
TRUST, created in Michigan, RITA P.
ANDERSON TRUST, created in Michigan,
BALTES COMPANY, incorporated in
Michigan, KEHL DEVELOPMENT
CORPORATION, incorporated in Iowa,
MOJAVE CANYON INC., incorporated in
Nevada, WARREN HOFFMAN FAMILY
INVESTMENTS, LP, a limited partnership
formed in Iowa, PATRICK J. ANGLIN, an
individual resident of Illinois; JUDY A.
BONNET, an individual resident of Illinois,

1 CHRISTINA M. KEHL, an individual resident
2 of Illinois, DANIEL J. KEHL, an individual
3 resident of Iowa, KEVIN A. KEHL, an
4 individual resident of Iowa, KEVIN KEHL AS
5 GUARDIAN OF ANDREW KEHL, an
6 individual resident of Iowa, KEVIN KEHL AS
7 GUARDIAN OF SUSAN L. KEHL, an
8 individual resident of Iowa, KRYSTINA L.
KEHL, an individual resident of Illinois,
ROBERT A. KEHL & TINA M. KEHL,
individual residents of Illinois, ROBERT J.
KEHL & RUTH ANN KEHL, individual
residents of Nevada, KEVIN MCKEE, an
individual resident of Iowa, CYNTHIA
WINTER, an individual resident of Iowa

9 Plaintiffs,

10 v.

11 COMPASS USA SPE, LLC, a Delaware
12 limited liability company, COMPASS
13 PARTNERS, LLC, a Delaware limited
liability company, DAVID BLATT, an
14 individual, and BORIS PISKUN, an
individual, SILAR ADVISORS, LP, a
Delaware limited partnership, SILAR
15 SPECIAL OPPORTUNITIES FUND, LP, a
Delaware limited partnership,

16 Defendants.

17
18 The above named Plaintiffs (collectively, the "Plaintiffs"), through their respective
19 counsel, Fulbright & Jaworski L.L.P., Ballard Spahr Andrews & Ingersoll, LLP, Jones Vargas,
20 and the Law Offices of Alan R. Smith, hereby aver and seek relief as set forth below:

21 **GENERAL AVERMENTS**

22 **A. Jurisdiction and Venue.**

23 1. The United States District Court has subject matter jurisdiction over this action
24 pursuant to 28 U.S.C. §§ 1331 and 1332(a).

25 2. Pursuant to 28 U.S.C. § 2201, *et seq.* (the Federal Declaratory Judgment Act), this
26 Court has jurisdiction to declare the rights and legal obligations of the interested parties.

27 3. Venue for this case in this district is proper pursuant to 28 U.S.C. § 1391.

B. The Parties.

4. Plaintiffs are, respectively, Nevada limited liability companies (“LLCs”), individuals, trust funds created in Michigan, companies incorporated in Michigan and Nevada, a corporation incorporated in Iowa, and a limited partnership formed in Iowa. All Plaintiffs are direct lenders/investors in certain investments made through USA Commercial Mortgage Company (“USACM”). These investments were in the nature of direct loans to third-party borrowers secured by real property and, sometimes, improvements. These loans were brokered by USA Commercial Mortgage Company (“USACM”). The members of the Plaintiff LLCs are all direct lenders/investors who originally invested with USACM, but assigned their interest in the loans to the LLCs in order to consolidate and unite to protect themselves and their investments from the actions of Defendants as alleged herein. The members of the Plaintiff LLCs, or their predecessors in interest, are named as payees on certain Promissory Notes and Deeds of Trust evidencing and perfecting the secured loans brokered by USACM. Each Plaintiff LLC is a direct lender/investor in a separate and distinct loan. (As used herein, the term “Plaintiff” or “Plaintiffs” shall refer to the named Plaintiffs in this case, including the LLCs, and the direct lender individuals or entity Plaintiffs, as contextually appropriate.)

5. Defendant Compass USA SPE, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

6. Defendant Compass Partners, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York. (Compass USA SPE, LLC and Compass Partners, LLC are collectively referred to herein as "Compass").

7. Defendant David Blatt ("Blatt") is a resident of the State of New York and is a member and manager of Compass.

8. Defendant Boris Piskun (“Piskun”) is a resident of the State of New York and is a member and manager of Compass.

1 9. Defendant Silar Advisors, LP is a limited partnership organized and existing
 2 under the laws of the State of Delaware, with its principal place of business in the State of New
 3 York.

4 10. Defendant Silar Special Opportunities Fund, LP is a limited liability company
 5 organized and existing under the laws of the State of Delaware, with its principal place of
 6 business in the State of New York (hereafter, Silar Advisors, LP, and Silar Special Opportunities
 7 Fund, LP shall collectively be referred to as "Silar").

8 **C. General Background.**

9 11. USA Commercial Mortgage Company, defined above as USACM, which
 10 sometimes did business under the name "USA Capital," was formed as a Nevada corporation in
 11 1989 and was in the business of underwriting, originating, brokering, funding and servicing short
 12 term (typically one year or less) commercial loans primarily secured by residential and
 13 commercial developments, on behalf of private investors/direct lenders.

14 12. On January 11, 1990, USACM obtained a license to act as a mortgage
 15 broker/agent in the State of Nevada under NEVADA REVISED STATUTES Chapter 645B (2005) and
 16 NEVADA ADMINISTRATIVE CODE Chapter 645B (2007).

17 13. USACM routinely advertised and promoted, through sales and marketing
 18 literature, high-yield secured investments and represented that no investors had ever lost money
 19 in their investments with USACM.

20 14. On April 13, 2006, USACM filed a Chapter 11 Petition for bankruptcy in the
 21 Bankruptcy Court for the District of Nevada, Las Vegas, together with four other entities related
 22 to USACM (hereinafter collectively referred to as the "USA Bankruptcy Cases").

23 15. At the time USACM filed its bankruptcy petition, approximately 3,600 investors
 24 were "lenders" in one or more loans originated and serviced by USACM. These 3,600 investors
 25 are commonly referred to as "direct lenders."

26 16. The loans brokered by USACM on behalf of the direct lenders are each evidenced
 27 by a "Promissory Note Secured By a Deed of Trust" or a "Promissory Note Secured By a
 28 Mortgage" (respectively, the "Promissory Note"), which were executed by third-party borrowers

1 in favor of the direct lenders (or their predecessors in interest) in each loan. All loan documents,
 2 including the Promissory Notes, expressly provide that they are governed by Nevada law.

3 17. At the time USACM brokered direct loans, each lender/investor and USACM
 4 entered into various Loan Servicing Agreements (“Loan Servicing Agreements” or “LSAs”)
 5 pursuant to which USACM would service the loans it brokered on behalf of direct lenders. Per
 6 USACM’s requirements, each direct lender was supposed to execute a single Loan Servicing
 7 Agreement that covered, or purported to cover, every investment made by that direct lender with
 8 USACM over time. All Loan Servicing Agreements expressly provide that they are governed by
 9 Nevada law. However, on information and belief, and based upon an audit conducted by the
 10 State of Nevada, Department of Business and Industry, Division of Mortgage Lending
 11 (“NMLD”), a substantial number of direct lenders never executed Loan Servicing Agreements.
 12 Additionally, there are various forms of the Loan Servicing Agreements, which include
 13 differences in several key provisions (such as servicing fees ranging from 0% to 4%). The
 14 consequence of USACM’s documentation was that most or all of the loans were serviced by a
 15 single servicer operating under multiple, inconsistent Loan Servicing Agreements.

16 18. At the time USACM filed its bankruptcy petition, the loan portfolio it was
 17 servicing pursuant to the Loan Servicing Agreements consisted of approximately 115 loans
 18 having a combined outstanding principal balance of approximately \$960 million. Most of the
 19 original direct lenders invested in more than one of the serviced loans, with there being an
 20 average of approximately three to four loans for each direct lender.

21 19. During the course of the USA Bankruptcy Cases, USACM admitted that it had
 22 breached the Loan Servicing Agreements, breached its fiduciary duties and violated Nevada state
 23 law prior to filing its bankruptcy petition.

24 20. As a result of USACM’s fraudulent misrepresentations and conduct, 100% of the
 25 portfolio of loans USACM brokered are in default. This fact is in stark contrast to the national
 26 default rate for commercial loans, which is approximately 1.5%.

27 21. On or about September 22, 2006, USACM filed its *Motion for Order Scheduling*
 28 *an Auction for the Sale of Certain Assets, Appointing SPCP Group, LLC, as Lead Bidder, and*

1 *Approving Bid Procedures and Protections* in the Bankruptcy Case, in which USACM sought to
 2 establish the parameters for the sale of certain assets in the USA Bankruptcy Cases, primarily
 3 consisting of valuable assets of a related debtor, the First Trust Deed Fund. The Bankruptcy
 4 Court entered an Order: *(A) Scheduling an Auction for the Sale of Certain Assets; (B) Appointing*
 5 *SPCP Group, LLC, as Lead Bidder; and (C) Approving Bid Procedures and Protections,*
 6 *Approving Bidding Procedures* (“Order Scheduling Auction”) on November 8, 2006. The
 7 stalking horse bidder agreed to honor the obligations of USACM under the Loan Servicing
 8 Agreements as part of the sale, but did not attribute any of its initial bid price to the Agreements.

9 22. After the Order Scheduling Auction was entered, but prior to the auction’s being
 10 conducted, Mesriow Financial Interim Management (“MFIM”), the Bankruptcy Court’s
 11 appointed manager for USACM, prepared calculations of the potential default interest under the
 12 loans.

13 23. Upon information and belief, USACM did not collect default interest (which,
 14 according to the majority of the Loan Servicing Agreements, is waivable at the option of the
 15 direct lenders) upon discounted settlement of a loan – *i.e.*, where less than 100% of principal and
 16 interest was paid by the borrower. USACM’s pattern and practice of not collecting default
 17 interest upon discounted loan settlements conform with industry standards.

18 24. Upon information and belief, Compass became aware of the opportunity to
 19 purchase the USACM assets through its business dealings with direct lenders whereby Compass
 20 bought certain direct lenders’ loan interests at discounted rates.

21 25. The Bankruptcy Court conducted an auction of various assets of the USA
 22 Bankruptcy Cases on December 7, 2006.

23 26. Compass was the successful bidder at the auction and, on February 16, 2007 (the
 24 “Closing Date”), acquired substantially all of the assets of USACM and its related debtor, the
 25 First Trust Deed Fund (“FTDF”), in exchange for approximately \$67 Million. The Compass bid
 26 was apparently broken down by an initial bid of \$48 million for the FTDF assets and \$8 million
 27 for the loan servicing rights under the Loan Servicing Agreements and other fees (“Purchased
 28 Assets”). The remaining amounts were to be allocated by an over-bid agreement between FTDF

1 and USACM, which was filed under seal, and a break-up fee of \$1.5 million to the stalking horse
 2 bidder. The sale was expressly conditioned upon confirmation of the USACM's Chapter 11
 3 Plan of Reorganization (the "Plan"), which was confirmed by an order of the Bankruptcy Court
 4 entered on January 8, 2007 (the "Confirmation Order").

5 27. The USACM Plan effectively compromised¹ and released all claims of USACM
 6 and its affiliated debtors against the direct lenders, which would include all fees (e.g., loan
 7 servicing fees, success fees) and/or claims for default interest under the various Loan Servicing
 8 Agreements accrued but unpaid as of the Effective Date of the Plan. Consequently, such
 9 released or waived rights to claim and collect pre-Effective Date fees and interest were not
 10 conveyed to Compass when it purchased USACM's surviving compensation rights under the
 11 Loan Servicing Agreements, and the only such fees and default interest claims purchased by
 12 Compass were those accruing **after** the Effective Date of the Plan.

13 28. **On information and belief, Compass subsequently sold, transferred and**
 14 **conveyed all right, title, and interest in the Purchased Assets to Silar. Such transfer of**
 15 **interest had the effect of passing to Silar all benefits and burdens, and all rights and**
 16 **obligations, of the "Servicer" under the Loan Servicing Agreements. Compass has**
 17 **subsequently acted as subservicer for Silar pursuant to such engagement, although**
 18 **Compass has always identified itself as "the servicer."** Accordingly, any and all allegations
 19 **of breaches of duty and other claims and causes of action contained in this Second**
 20 **Amended Complaint against Compass apply to Silar with equal force and effect, and Silar**
 21 **is liable to Plaintiffs to the same extent and upon the same grounds as Compass is liable,**
 22 **either directly, under the doctrine of *respondeat superior*, or pursuant to principles of**
 23 **agency.**

24

25

26 1 The compromise required the class of direct lenders to surrender their rights to "prepaid interest" back to the
 27 USACM bankruptcy estate in exchange for the debtor's releases of all other claims against the direct lenders
 28 pursuant to the Loan Servicing Agreements. *See* Debtor's Third Amended Joint Chapter 11 Plan of Reorganization,
 Case No. BK-S-06-10725 LBR, Doc. No. 1799, II(C)(1)(e)(ii); *see also* Debtor's First Amended Disclosure
 Statement for Debtor's Third Amended Joint Plan of Reorganization (Affects All Debtors), Case No. BK-S-06-
 10725 LBR, Doc. No. 1798, IX(B)(2)(a)(v).

1 29. Other than certain conditions not germane to this action, the Loan Servicing
 2 Agreements were transferred to Compass and Silar without any modification whatsoever, a fact
 3 frequently affirmed by the presiding bankruptcy judge.

4 30. Compass was not able to obtain a mortgage broker/agent license from the State of
 5 Nevada, Mortgage Lending Division, as required by the Asset Purchase Agreement. As a result,
 6 in February 2007, Compass entered into a sub-servicing agreement with USACM. The sub-
 7 servicing agreement, among other things, allowed for USACM to provide administrative
 8 functions, while negotiations with borrowers, foreclosures, or other legal proceeding were left to
 9 Compass. As acting servicer, Compass was responsible for the actions of its sub-servicer
 10 USACM.

11 31. In May 2007, the NMLD entered a formal *Order Revoking Mortgage Broker*
 12 *License And Notice of Right To Request Hearing*, pursuant to which USACM's license to act as a
 13 mortgage broker/agent in Nevada was revoked and in which the State described USACM as
 14 having instituted "a calculated, self-serving deceptive scheme that was enacted to allow the
 15 Principals to potentially profit with no risk, while astronomical risk inured to the unsuspecting
 16 lenders." On May 9, 2007, a formal *Order Imposing Fine And Order To Cease And Desist And*
 17 *Notice of Right To Request Hearing* was entered. Pursuant to this Order, Compass was ordered
 18 to cease and desist all mortgage lending/agent activities in Nevada.

19 32. Also in May 2007, and pursuant to NEV. ADMIN. CODE § 645B.073, direct lenders
 20 owning more than 51% of the beneficial interests in certain loans exercised their right to replace
 21 Compass and/or Silar as loan servicer to their respective loans.

22 **D. Facts Relating to Compass's Conduct as Servicer and Involvement of Other**
Defendants.

23 **1. *Compass, its Managers, and Silar Owe Fiduciary Duties to Plaintiffs.***

24 33. Compass has represented in a declaration submitted by Blatt that it is a national
 25 firm with over 200 employees which acquires over \$100 million in loan interests every year.
 26 Blatt and Piskun, as managers of Compass, control and direct Compass's actions, policies, and
 27 strategies.

1 34. Silar, together with its principals, has a substantial background in the lending
2 industry in numerous asset classes, including consumer, residential and commercial assets. Silar
3 provided financing to Compass for the Purchased Assets, and, upon information and belief,
4 provided guidance, oversight, and conducted due diligence in connection with the financing.
5 Additionally, as stated above upon information and belief, Silar bought all rights, titles and
6 interests in the Purchased Assets from Compass, thereby becoming the true “Servicer” of the
7 USACM loans. Silar subsequently engaged Compass as its subservicer for the loans, although
8 Compass has always identified itself as “the servicer.”

9 35. Compass completed extensive due diligence on the loans in order to formulate its
10 bid for the FTDF assets. Upon information and belief, Silar was aware of the results of such due
11 diligence and loaned substantial funds to Compass for the purpose of entering into the Asset
12 Purchase Agreement.

13 36. On February 16, 2007, Compass issued a press release in which it stated that the
14 actual value of the assets purchased from USACM and FTDF was more than \$150 million.
15 Based on the full note value of \$62,652,742 for the FTDF assets, not allowing for any borrower
16 defaults, it can be deduced that Compass expected at that time well in excess of \$87 million in
17 profit to be realized from the loan servicing rights alone (for which Compass had paid a mere \$8
18 million). However, documents produced by Compass indicate that Compass hopes to extract for
19 itself (and Silar) more than \$130 million in profit from those same loan servicing rights.

20 37. As a purported loan servicer, Compass’s capabilities and experience directly
21 affect the underlying performance of the loans. Further, as a purported loan servicer, Compass
22 acts as an agent to Plaintiffs and other direct lenders and, therefore, assumes fiduciary
23 responsibilities owed to Plaintiffs and other direct lenders. These fiduciary duties are also
24 assumed by Blatt and Piskun as managers of Compass, as well as by Silar, the true loan servicer.

25 38. Compass’s strategy and approach for servicing the loans (and extracting its
26 projected “profit” noted above) has created a distinct and substantial conflict of interest between
27 and among Compass, Blatt, Piskun, on the one hand, and Plaintiffs, on the other hand, as well as
28 between and among Silar, on the one hand, and Plaintiffs, on the other hand.

1 40. Blatt and Piskun have controlled and authorized the objectives of Compass,
 2 directed its conduct, and participated in its actions (including Compass's inappropriate acts and
 3 conspiracy participation) in their official capacity as managers and directors of the company. In
 4 this way, Blatt and Piskun have understood, developed, and agreed to the objectives of the
 5 conspiracy, as well as Compass's role and their own personal roles in it. Blatt and Piskun have
 6 worked through Compass with the purpose and goal of harming Plaintiffs and depriving them of
 7 loan proceeds, in violation of their fiduciary duties to Plaintiffs.

8 39. Blatt and Piskun have also acted outside of the scope and authority of their
 9 employment for their own advantage by spreading false, fraudulent, and misleading information
 10 amongst direct lenders through internet sites, chat rooms, telephone conference calls, and email
 11 and by generally "spying" on direct lenders. To facilitate their spying and distribution of false,
 12 fraudulent, and misleading information Blatt and Piskun have used false IDs and email
 13 addresses. Such actions are clearly outside of the course and scope of Blatt's and Piskun's
 14 employment and are in violation of their fiduciary duties to Plaintiffs.

15 **2. *Compass and Silar's Business Strategy to Collect Fees.***

16 40. Compass, its individual managers (Blatt and Piskun), and Silar have formed an
 17 association-in-fact through which they have agreed and conspired to participate in a series of
 18 concerted activities with the intent to defraud and harm Plaintiffs, thereby gaining a substantial
 19 monetary windfall for themselves. In order to effectuate this plan and conspiracy, Compass and
 20 its individual managers (Blatt and Piskun), with full knowledge, support, and agreement of the
 21 true loan servicer, Silar, has put into action a business strategy to extract value from the collateral
 22 pledged by third-party borrowers to Plaintiffs and other direct lenders by attempting to deduct
 23 default interest, late fees, loan origination fees, and other fees (including pre-petition interest and
 24 fees which it did **not** acquire in its purchase from USACM and FTDF) from loan payoffs and/or
 25 collateral proceeds **before** remitting amounts due to all Plaintiffs and other direct lenders. This
 26 practice is in direct conflict with: (a) the loan documents (Promissory Notes, Deeds of Trust, and
 27 Loan Agreements); (b) the Loan Servicing Agreements; (c) the intent of the parties to the loans,
 28 (d) various other agreements; (e) the historical practices of USACM both prior to and during its

1 bankruptcy; (f) the current practices of the USACM post-bankruptcy trust; (g) long established
2 lending industry standards and practices; and (h) Compass's, its managers', and Silar's fiduciary
3 duties and obligations to Plaintiffs.

4 41. Pursuant to Section 5 of some, but not all, of the Loan Servicing Agreements, the
5 loan servicer may retain, as compensation for servicing loans (depending on which form of the
6 Loan Servicing Agreement was executed by those direct lenders): (a) a servicing fee varying
7 between 0-4% per annum; and (b) any late charges and default interest collected from the
8 borrower. However, late charges and default interest may be collected **only** if the direct lenders
9 exercise their option to charge default interest and/or late fees, and then only if default interest
10 and/or late fees are actually collected from the borrower over and above principal and accrued
11 interest. No Loan Servicing Agreement provides for the recovery of certain of the fees now
12 claimed by Compass (e.g., "success" or "exit" fees). Further, pursuant to Section 4 of most of
13 the Promissory Notes, all payments on the Promissory Notes are to be applied **first** toward the
14 payment of regular accrued interest and then to principal.

15 42. The cumulative unpaid principal balance on the loans in which Plaintiffs are
16 direct lenders is currently in excess of \$485 million. The servicing fees and default interest fees,
17 to which Compass claims it is entitled, accrues at approximately 10% or more per annum. With
18 this financial windfall in mind and upon information and belief, Compass and its managers (and
19 Silar, as the true loan servicer) choose, to the substantial detriment of Plaintiffs and other direct
20 lenders, to either do nothing to collect loan payments or to delay resolution of loans in order to
21 allow greater default interest and late fees to accrue. A number of the loans in which Plaintiffs
22 are direct lenders are currently, or have been in the past, in this untenable position. There appear
23 to have been several times in which borrowers have attempted, or have offered, to pay in full or
24 otherwise resolve loans, but Compass and its managers (and Silar, as the true loan servicer) have
25 failed and refused to negotiate resolutions of such loans with the borrowers. Compass's and its
26 managers' (and Silar's, as the true loan servicer) apparent failure and refusal to work with
27 borrowers to resolve defaulted loans further injures Plaintiffs because such behavior exposes
28 Plaintiffs and other direct lenders to lender liability claims and litigation. Some borrowers have

1 already filed such suits against Plaintiffs and other direct lenders on certain loans and additional
2 suits have been threatened against Plaintiffs.

3 43. Additionally, in order to continue accruing default interest and other fees for their
4 own benefit, Compass and its managers (and Silar, as the true loan servicer) have failed to timely
5 communicate to Plaintiffs and other direct lenders certain offers made by borrowers to repay
6 their debts to the direct lenders. Additionally, Compass and its managers (and Silar, as the true
7 loan servicer) have misrepresented the status of loans to Plaintiffs and other direct lenders for the
8 purpose of coercing the Plaintiffs and other direct lenders to agree to modifications to loan
9 documents, resulting in additional, undisclosed fees to Compass, its managers, and Silar.
10 Further, Compass and its managers (and Silar, as the true loan servicer) have refused to process
11 previously achieved direct lender/borrower settlement agreements.

12 44. Upon information and belief, Compass, its managers, and/or Silar have knowingly
13 made advances to borrowers and other third parties on certain loans on behalf of Plaintiffs and
14 other direct lenders, which it was not authorized to make.

15 45. Compass and its managers (and Silar, as the true loan servicer) have also
16 demanded immediate payment of servicer advances from Plaintiffs and other direct lenders
17 without providing a full explanation or an accounting for the service advances.

18 46. Further, Compass and its managers (and Silar, as the true loan servicer) have
19 subjected some Plaintiffs and other direct lenders to foreclosures upon their collateral,
20 unapproved default interest, and other fees and expenses without the express authorization of
21 Plaintiffs and other direct lenders. These, and other, self-interested actions have placed
22 Plaintiffs' and other direct lenders' principal investments/loans at substantial risk.

23 47. Additionally, Compass, its managers, and Silar are aware of NEV. ADMIN. CODE §
24 645B.073 (2007) and have attempted to take advantage of its provisions by acquiring or seeking
25 to acquire 51% of the beneficial interests in certain loans to prevent Plaintiffs and other direct
26 lenders from removing Compass as loan servicer. These actions violate Compass's fiduciary
27 duties to Plaintiffs and other direct lenders.

1 48. Since taking over as loan servicer, Compass and its managers (and Silar, as the
2 true loan servicer) appear to have knowingly used to their benefit, and to the detriment of
3 Plaintiffs and other direct lenders, a three-day deadline and other very short deadlines for direct
4 lender responses to loan resolution offers, even when substantially more time was feasible, in
5 breach of the Loan Servicing Agreements. This action violates Compass's, its managers', and
6 Silar's fiduciary duties to Plaintiffs and other direct lenders.

7 **3. *Borrower Payments and Interest Earning Accounts.***

8 49. Upon information and belief, Compass, its managers, and/or Silar have negotiated
9 with borrowers for their own benefit, pursuant to which Compass, its managers, and Silar
10 knowingly, and in collaboration with one another, would receive loan payoff proceeds from
11 borrowers when Plaintiffs and other direct lenders were not receiving full principal and interest
12 payments from the borrowers. These proceeds are rightfully due and owing to Plaintiffs and
13 other direct lenders.

14 50. Upon information and belief, Compass, its managers, and Silar have collaborated
15 on the formation of Compass's business plan, as well as the development of a strategy whereby
16 Compass and Silar would work together to receive loan payoff proceeds from borrowers (which
17 are due and owing to Plaintiffs and other direct lenders) and direct them instead to Silar in
18 payment of Silar's financing of Compass's acquisition of the Purchased Assets. Despite
19 knowledge that their actions harm Plaintiffs and other direct lenders, Compass, its managers, and
20 Silar have put this business plan/strategy into action by working together to direct borrowers to
21 transmit any and all loan payments (including payments of principal, regular accrued interest,
22 default interest, late fees, and other fees) directly to an account held and controlled by Silar (the
23 "Silar Account"). These loan payments are specifically identifiable funds paid by borrowers in
24 satisfaction of the requirements in the Promissory Notes underlying specific loans. The Silar
25 Account is an interest bearing account in which Silar earns money on funds due and owing to
26 Plaintiffs and other direct lenders. Silar retains the interest earned on these funds.

27 51. Additionally, the loan proceeds improperly held by Silar have been knowingly
28 and improperly commingled with Silar's and Compass's own monies. Upon information and

1 belief, Silar transfers money from the Silar Account directly to Silar's own investors. Further,
 2 certain monies commingled in this account do not come from borrower payments but instead
 3 from deposits made by third-parties unaffiliated with Plaintiffs and other direct lenders.
 4 Although the account is controlled by Silar, Compass and its managers have knowingly allowed
 5 commingling to occur and, in fact, supported and enabled the commingling. These actions have
 6 been done with the specific intent to deprive Plaintiffs of their right to and security in their funds.

7 52. Upon information and belief, at the request of Compass and its managers and at
 8 various intervals, Silar transfers money from the Silar Account into an interest bearing account
 9 (the "Maximizer Account") controlled by Compass and Compass holds these funds due and
 10 owing to Plaintiffs and other direct lenders for an unspecified period of time solely to earn
 11 interest. For example, on or about July 18, 2007, Silar made a wire transfer of \$3,216,204.61 to
 12 Compass's Maximizer Account. Upon information and belief, Silar knows that this Maximizer
 13 Account is solely used to earn interest on funds not belonging to Silar or Compass. Compass
 14 later transfers monies due and owing to Plaintiffs and other direct lenders to its self-described
 15 "Disbursement Account," but retains all interest earned on Plaintiffs' and other direct lenders'
 16 funds while in the Maximizer Account. Compass eventually remits the funds in the
 17 Disbursement Account to Plaintiffs and other direct lenders, sometimes after the time required by
 18 Nevada law. This practice is in violation of Nevada law and Compass's, its managers', and
 19 Silar's fiduciary duties, and has injured Plaintiffs and will continue to injure Plaintiffs until
 20 judicial relief is obtained.

21 53. In addition, upon information and belief, many of the fund transfers requested by
 22 Compass from the Silar Account (in which the loan proceeds belonging to the Plaintiffs are held
 23 and controlled by Silar) do not correlate by time or amount with loan payments made by the
 24 borrower. These specific loan payments are due and owing to the direct lenders. Through
 25 Compass's, its managers', and Silar's actions, Plaintiffs are deprived of the actual borrower
 26 payments to which they are entitled and/or do not receive such payments in a timely manner.

27 4. ***Compass's Failure to Provide Legally Required Information and Compass's***
Dissemination of Materially False and Misleading Information.

28

54. Pursuant to NEV. REV. STAT. § 645B.185, each investor in USACM was required to receive and sign a Mortgage Investment Disclosure Form, approved by the NMLD. As detailed in the Mortgage Investment Disclosure Form, a mortgage broker/agent operating in Nevada is required to inform investors, among other things, that:

- a. "You are entitled to receive information regarding the mortgage broker you are dealing with," including the most recent financial statements.
- b. "A Mortgage Broker performing loan servicing has an obligation to account to the borrower and every investor for money collected and disbursed in the exercise of that function."
- c. "When the borrower on a mortgage loan fails to make required payments, the actions an investor can take, or that a servicing agent can take on behalf of an investor, are determined by provisions of Nevada Law and the documents and instruments evidencing the mortgage loan."

55. Plaintiffs and other direct lenders did not receive the benefit of the Mortgage Investment Disclosure Form as it relates to Compass (or to Silar, as the true loan servicer), nor have they received the required disclosures from Compass (or Silar). Non-exclusive examples of this include:

- a. Upon request, Compass and its managers have refused to disclose to Plaintiffs and other direct lenders, or to provide an accounting of, any compensation they (or Silar) are receiving, including the amount of default interest, late fees and other fees they have received in connection with loan payoffs;
- b. Plaintiffs and other direct lenders have been provided with limited information regarding Compass (and none at all regarding Silar) since Compass began servicing the loans, and Compass and its managers have refused requests for information about Compass or its practices;

c. Plaintiffs and other direct lenders have not been able to obtain any financial information concerning Compass, yet Compass was entrusted with nearly \$750 million dollars of direct lenders' money;

4 56. Despite the fact that many of the loans in the USACM loan portfolio were in term
5 default, and others have gone into term default since Compass has taken over as loan servicer,
6 Compass (and Silar, as the true loan servicer) has failed to make monthly reports to the NMLD
7 and to Plaintiffs regarding loan delinquencies as required under NEV. REV. STAT. § 645B.260. In
8 addition, Compass (and Silar, as the true loan servicer) appears to have failed to produce, keep
9 and maintain records and reports required by NEVADA REVISED STATUTES Chapter 645B and the
10 Loan Servicing Agreements.

11 57. Upon information and belief, Compass and its managers have circulated self-
12 interested offers to purchase Plaintiffs' and other direct lenders' interests, at substantial
13 discounts, but have not provided Plaintiffs and other direct lenders with all of the material terms
14 of the offers nor all of the loan information necessary to make an informed decision, including
15 sufficient loan status reports.

16 58. Upon information and belief, Compass and its managers have knowingly
17 circulated to Plaintiffs and other direct lenders, both directly through the United States mail and
18 through Compass's website, misleading and materially incomplete information outside of the
19 ordinary course and scope of business, purportedly for the purpose of reporting on legal
20 proceedings in this matter, but in reality and in effect for the purpose of and with the intent to
21 cause confusion, fear, distrust, dissention, and conflict among the direct lenders and to cause
22 disruption of their organization, communications, and legal actions in this case.

5. Power of Attorney.

24 59. Each direct lender (or predecessor in interest of each direct lender) executed a
25 power of attorney in favor of USACM when making their investments/loans. Those powers of
26 attorney expressly expire on the **maturity date of each related loan**. Furthermore, at the time
27 the Loan Servicing Agreements were transferred to Compass, many of the loans in the USACM
28 loan portfolio were in term default, and others have since gone into term default. As a result of

1 the term default of various loans in the USACM portfolio, Compass no longer has a valid power
 2 of attorney to act on behalf of direct lenders as required under NEV. REV. STAT. § 645B.330.
 3 Compass has not executed any written extension of any of the Powers of Attorney.

4 60. Despite the fact no valid power of attorney exists authorizing Compass to act on
 5 behalf of Plaintiffs and other direct lenders, Compass continues to hold itself out as a
 6 representative/agent of Plaintiffs (and other direct lenders) to borrowers, title companies and
 7 others. Upon information and belief, Compass and its managers, without the power to do so,
 8 have negotiated payoffs, filed lawsuits and executed satisfactions and releases on behalf of
 9 Plaintiffs and other direct lenders. Moreover, Compass has allegedly acted or purported to act on
 10 multiple loans pursuant to a single power of attorney per direct lender in direct violation of §
 11 645B.330.

12 61. The practices of Compass and its managers (and Silar, as the true loan servicer),
 13 as exemplified above, are in direct conflict with Nevada state laws, loan documentation
 14 (Promissory Notes, Deeds of Trust, and Loan Agreements), Loan Servicing Agreements, intent
 15 of the parties to the loans, various other agreements, long established industry standards and
 16 practices, and their fiduciary duties and obligations.

17 E. **Representative Examples of Breaches on Selected Loans.**

18 62. The following are *non-exclusive examples* of breaches committed in connection
 19 with specific loans. These breaches (set forth in alphabetical order) typify those committed by
 20 the Defendants on other, similarly situated loans.

21 (a) ***The Bay Pompano Loan.***

22 63. On or about April 4, 2007, a Bay Pompano Loan direct lender received a copy of
 23 an offer from the Bay Pompano Borrower which offered to pay the full principal and the full
 24 interest amount due and owing on the Bay Pompano Loan, as well as an “exit fee” of \$325,000,
 25 to Compass. On or about April 13, 2007, the Bay Pompano direct lender sent a certified letter to
 26 Compass requesting that Compass, as loan servicer, accept the offer on behalf of the Bay
 27 Pompano direct lenders. Compass never replied and never communicated this offer to other Bay
 28 Pompano Loan direct lenders.

1 64. In a progress report from Compass, Compass stated that it would send an offer to
2 the Bay Pompano Loan direct lenders in response to an offer made by the Bay Pompano
3 Borrower on May 17, 2007. Compass's letter requested that the Bay Pompano direct lenders
4 accept payment of 90% of the principal amount due and owing on the loan and no accrued
5 interest. However, a comparison of the Bay Pompano Borrower's May 17, 2007 offer to
6 Compass's proposed settlement payout showed that Compass, in furtherance of the conspiracy to
7 defraud Plaintiffs, was attempting to take over \$2,000,000.00 in fees for itself (and/or for Silar),
8 while the direct lenders would not be paid in full.

9 65. Later, the Bay Pompano Borrower made a revised offer of \$16,743.553.46.
10 Again, Compass never communicated this offer to the Bay Pompano Loan direct lenders.
11 Instead of countering or communicating this offer, Compass informed Bay Pompano Loan direct
12 lenders that it would foreclose on the loan collateral. When one Bay Pompano Loan direct
13 lender emailed Compass inquiring about these developments, Compass responded that the Bay
14 Pompano Borrower was not willing to make a full repayment of the loan – *i.e.*, could not pay
15 Compass all of the extra fees it sought for itself – therefore, Compass would foreclose on the
16 loan. Compass refused requests to contact this direct lender by phone to discuss these issues.

17 66. Compass (and Silar, as the true loan servicer) has failed to meet its fiduciary
18 duties and obligations under the Loan Servicing Agreements by not readily communicating with
19 Plaintiff Bay Pompano, LLC and other direct lenders. While Compass has scheduled status
20 conference calls, often it does not allow the direct lenders to talk to Compass on these calls.
21 Sometimes Compass does not even participate in lender conference calls it has scheduled, which
22 are purportedly for the benefit of the direct lenders and for the purpose of advising and
23 communicating with direct lenders regarding loan status. For example, on or about August 16,
24 2007, a conference call was scheduled on the Bay Pompano Loan. One Bay Pompano direct
25 lender waited on the call line for 15 minutes without a representative from Compass appearing.
26 In addition, Bay Pompano direct lenders have left numerous messages and sent emails to
27 Compass without receiving responses. These actions clearly violate Compass fiduciary duties
28 and obligations under the Loan Servicing Agreements.

(b) *The Binford Medical Loan.*

67. On information and belief, Compass and its managers (and Silar, as the true loan servicer), in violation of their fiduciary duties, wrongfully pursued foreclosure adverse to Plaintiff Binford Lenders, LLC's ("Binford, LLC") and other direct lenders' best interests on the Binford Medical Loan.

68. Notwithstanding the near completeness of the project and the potential for the Binford Medical Borrower to fully satisfy its loan obligations, Compass and its managers (and Silar, as the true loan servicer) recklessly and irresponsibly chose to pursue foreclosure proceedings and risk financial devastation for Plaintiff Binford, LLC and other direct lenders.

69. Additionally, since Compass took over the USACM loan portfolio, it has consistently ignored communications from Plaintiff Binford, LLC and other direct lenders and failed to provide timely information about the status of the Binford Medical Loan, including accounting information. Because the Binford Medical Loan has been in default for more than two consecutive payments, Compass was required to provide monthly accounting, under Nev. Rev. Stat. § 645B.260(1)(b), but has failed to do so. This also violates Section 2(d) of the Loan Servicing Agreements. These actions (or lack thereof) are in violation of Compass's and Silar's fiduciary duties.

70. As an example, at least one direct lender in the Binford Medical loan sent several emails and letters (including a certified letter) to Compass and its managers requesting loan and accounting information. Compass did not respond. Instead, several members of Plaintiff Binford, LLC and other direct lenders received cease and desist letters from Compass's legal counsel threatening litigation. On information and belief, members of Plaintiff Binford, LLC and other direct lenders received their first communication containing information about the Binford Medical Loan from Compass in a non-loan specific report dated May 18, 2007, 91 days after Compass took over as purported loan servicer. This report stated for the first time that Compass was pursuing foreclosure on the Binford Medical Loan. Members of Plaintiff Binford, LLC and other direct lenders received their first Binford Medical Loan specific correspondence *over five months* after Compass purportedly acquired the servicing rights. This Binford Medical

Loan specific correspondence stated that Compass had commenced litigation over an internal dispute with the borrower and developer.

71. Compass, as sub-servicer for Silar and in violation of its fiduciary duties and the
Loan Servicing Agreements, has also refused to share critical loan and accounting information
with Plaintiff Binford, LLC and other direct lenders so that they can make an informed decision
on a proposed discounted payoff negotiated during mediation. Because Plaintiff Binford, LLC
and other direct lenders were refused material information, certain Binford Medical Loan direct
lenders were forced to reject the proposal.

(c) *The Cabernet Highlands LLC Loan.*

72. On information and belief, Compass and Silar agreed and conspired to have the borrower of the Cabernet Highlands LLC Loan wire loan payoff proceeds, portions of which were due and owing to Plaintiff Cabernet Highlands Lenders, LLC (“Cabernet, LLC”) and other direct lenders, directly to the Silar Account. For instance, on or about July 9, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$150,246.49 to Silar. Also, on or about August 9, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$37,589.35 to Silar. Additionally, on or about September 21, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$129,482.73 to Silar. Furthermore, on or about October 12, 2007, Compass and Silar fraudulently induced the Cabernet Highlands Borrower to make a wire transfer of \$36,337.50 to Silar. This Silar controlled account is an interest bearing account.

73. Certain portions of the transferred funds were due and owing to direct lenders in the Cabernet Highlands Loan, including Plaintiff Cabernet, LLC. Subsequently, Silar kept the funds due and owing Plaintiff Cabernet, LLC direct lenders for a period of time, earning interest on monies it did not own. Compass, its managers (Blatt and Piskun), and Silar agreed that Silar would keep the interest earned with the intent to deprive Plaintiff Cabernet, LLC and other direct lenders of the earned interest due and owing to them. Silar then transferred these funds to certain Compass-controlled bank accounts, including the Compass-controlled Maximizer Account,

1 which Silar knew also earned interest. Compass retained these funds in the Maximizer Account
2 for a period of time earning interest on monies due and owing Plaintiffs and other direct lenders.
3 Both Compass and Silar kept the interest earned for their own benefit, with the intent to deprive
4 Plaintiff Cabernet, LLC, and other direct lenders, of these funds.

5 (d) ***The Charlevoix Loan.***

6 74. The Charlevoix Homes loan went into interest default and maturity default on
7 April 4, 2007. On information and belief, Compass and its managers (and Silar, as the true loan
8 servicer) have made no effort either to negotiate an extension, an act required by the original
9 loan documents, or to send a Notice of Default to Charlevoix Homes.

10 75. Additionally, Compass and its managers (and Silar, as the true loan servicer) have
11 failed to provide timely information to Plaintiffs and other direct lenders. For example, on or
12 about August 5, 2007, one direct lender sent Compass an e-mail requesting why no status report
13 had been given to the lenders in this loan since the maturity date. On information and belief,
14 Compass did not respond and to this date has taken no action to resolve the defaulted Charlevoix
15 loan.

16 (e) ***The Clear Creek Plantation Loan.***

17 76. On March 23, 2007, Compass and its managers, in furtherance of the conspiracy
18 to defraud direct lenders, knowingly and intentionally sent a false, fraudulent, and misleading
19 letter through the United States mail to the direct lenders of the Clear Creek Plantation Loan,
20 which requested their approval of a settlement proposal. Through the proposed settlement, the
21 direct lenders would receive 100% of principal, but *no accrued, unpaid interest*. The letter
22 falsely led the direct lenders to believe that the Clear Creek Borrower could not pay accrued
23 interest. This letter was false, fraudulent, and misleading because the members of Plaintiff Clear
24 Creek, LLC and other direct lenders subsequently learned that the Clear Creek Borrower had, in
25 fact, expressly told Compass that it would pay not only the full amount of principal owing on the
26 loan, but also a substantial portion of the accrued, but unpaid interest. Compass gave the Clear
27 Creek Plantation Loan direct lenders only one week in which to respond, to the settlement
28 proposal Compass offered.

1 77. Certain direct lenders contacted Compass and its managers for information
2 concerning the loan, including the status of the loan, status of the negotiations, and reasons why
3 the Clear Creek Plantation Borrower was unable to pay off the accrued interest due and owing to
4 the direct lenders. Compass and its managers, in clear violation of their fiduciary duties and in
5 furtherance of the conspiracy to defraud direct lenders, never responded. Desperate for
6 information, one day before the deadline imposed by Compass to lodge any objections against
7 the settlement deal, certain direct lenders held a conference call with Clear Creek Plantation
8 Borrower.

9 78. During this conference call, the direct lenders learned that Compass and its
10 managers had misrepresented the terms of the settlement proposal to the direct lenders and that
11 the Clear Creek Plantation Borrower had expressly offered and was willing to pay off the full
12 unpaid principal balance, *as well as a substantial portion of the accrued interest*. In fact, the
13 Clear Creek Plantation Borrower had already secured financing specifically intended to pay off
14 all principal and a significant portion of the accrued interest due and owing to the direct lenders
15 of the Clear Creek Plantation Loan.

16 79. Furthermore, on or about July 2, 2007, Compass, through Mark Olson, spoke by
17 telephone to one or more direct lenders in the Clear Creek Plantation Loan and stated that a
18 recent appraisal of the property showed that there was not enough value in the property to cover
19 the full amount due and owing on the loan and that the value of the property would only cover
20 the principal amount of the Clear Creek Plantation Loan and Compass's default interest and
21 other fees, but not the direct lenders' accrued, but unpaid interest. This statement was apparently
22 false, fraudulent, and misleading because the "recent appraisal," dated December 29, 2006,
23 showed the "as is" value of the property as \$6,415,000.00 – *i.e.*, more than the total payoff of the
24 Clear Creek Plantation Loan (including Compass's alleged fees). Also, the appraisal showed the
25 projected market value of the property as of July 1, 2007 as \$9,625,000.00, far more than the
26 value of the Clear Creek Plantation Loan.

27 80. On or about July 11, 2007, the Clear Creek Plantation Borrower paid off the Clear
28 Creek Plantation Loan in its entirety. At that time and in furtherance of the conspiracy to

1 defraud direct lenders, Compass and Silar agreed and conspired to have the Clear Creek
 2 Plantation Borrower wire the payoff proceeds in the amount of \$3,923,771.68, portions of which
 3 were due and owing to Plaintiff Clear Creek, LLC and other direct lenders, directly to the Silar
 4 Account thereby converting Plaintiff Clear Creek, LLC's funds. Silar earned interest on the
 5 converted funds in the Silar controlled account which were due and owing to Plaintiff Clear
 6 Creek, LLC. Silar has improperly kept this earned interest for itself, instead of distributing it to
 7 Plaintiff Clear Creek, LLC and other direct lenders, to whom it is owed and belongs.

8 81. On or about July 18, 2007, Silar, in furtherance of the conspiracy to defraud direct
 9 lenders, wired \$3,216,204.61 of the Clear Creek Plantation payoff funds (minus the earned
 10 interest and certain other monies, which Silar converted and kept for itself) to the Compass-
 11 controlled Maximizer Account which Silar knew also earned interest. Compass retained these
 12 funds in the Maximizer Account until on or about August 31, 2007, in violation of NEV. ADMIN.
 13 CODE § 645A.050(2), and then transferred monies due and owing to Plaintiff Clear Creek, LLC,
 14 and other direct lenders (minus the earned interest, which Compass converted and kept for itself)
 15 to the Disbursement Account. Compass remitted payment, but no earned interest to Plaintiff
 16 Clear Creek, LLC, and other direct lenders, on or about August 31, 2007.

17 82. Both Compass and Silar knowingly converted and kept the interest earned on the
 18 monies due and owing the Direct Lenders for their own benefit with the intent to deprive
 19 Plaintiff Clear Creek, LLC, and other direct lenders, of the funds which belong to them.

20 (f) ***The Fox Hills 216 and Eagle Meadows Loan.***

21 83. In November 2006, the Fox Hills 216/Eagle Meadows Borrower met with
 22 representatives of Compass, including Piskun, to discuss payoff of the current balance due and
 23 owing to the direct lenders on the Fox Hills 216 Loan which was approximately \$58 million.
 24 The Fox Hills 216 Loan and the Eagle Meadows Loan stem from the same real estate
 25 development project in Los Banos, California.

26 84. Compass, through Piskun, misrepresented to the Fox Hills 216/Eagle Meadows
 27 Borrower that it controlled the Fox Hills 216 Loan, even though at that time the Asset Purchase
 28 Agreement had not yet been signed, and stated that decisions regarding the payoff of the loan

1 would be made by Compass. Compass, through Piskun, requested the Fox Hills 216/Eagle
 2 Meadows Borrower present a proposal for resolving the Fox Hills 216 Loan.

3 85. The Fox Hills 216/Eagle Meadows Borrower presented two alternative payoff
 4 proposals to Compass in early December 2006. Compass did not respond to the two payoff
 5 proposals sent by the Fox Hills 216/Eagle Meadows Borrower.

6 86. The Fox Hills 216/Eagle Meadows Borrower again contacted Compass and its
 7 managers at the end of February 2007 and offered a third settlement proposal, which Compass
 8 did not respond to until over two weeks later when it demanded a payoff amount of \$70 million,
 9 approximately \$12 million more than the original principal amount of the Fox Hills 216 Loan.
 10 The Fox Hills 216/Eagle Meadows Borrower requested a breakdown of Compass's \$70 million
 11 payoff figure, which Compass refused to provide.

12 87. Later, the Fox Hills 216/Eagle Meadows Borrower made a final payoff proposal
 13 of \$65 million. In breach of its fiduciary duties and in furtherance of the conspiracy to defraud
 14 direct lenders, Compass never communicated the Fox Hills 216/Eagle Meadows Borrower's final
 15 payoff offer to the direct lenders, including members of Plaintiff Fox Hills, LLC.

16 88. Compass's and its managers' (and Silar's, as the true loan servicer) wholly
 17 unjustified failures to provide the Fox Hills Loan direct lenders, including members of Plaintiff
 18 Fox Hills, LLC, with any of the three settlement proposals, damaged the value of the Fox Hills
 19 216 Loan and the value of the Eagle Meadows Loan, which Plaintiffs Eagle Meadows Lenders,
 20 LLC ("Eagle Meadows, LLC") is invested.

21 89. As a result of Compass's actions in the Fox Hills 216 Loan, at the beginning of
 22 November 2007, the Fox Hills 216/Eagle Meadows Borrower filed a lender liability action
 23 against members of Fox Hills, LLC and other direct lenders in California state court.

24 90. Additionally and in furtherance of the conspiracy to defraud investors, Compass,
 25 through Blatt and Piskun, collaborated with Silar on a loan to secure certain water rights related
 26 to the Fox Hills 216 and Eagle Meadows Loans, which also had the added side benefit of
 27 providing a lucrative and secure financial opportunity to Silar. Compass (through Blatt and
 28 Piskun) and Silar conspired and agreed that Silar would loan the money necessary to secure the

1 water rights and, in return, Silar would receive a very preferential return on the fully secured loan
2 – to the detriment of Plaintiff Fox Hills, LLC, Plaintiff Eagle Meadows, LLC, and other direct
3 lenders. Because this loan would be labeled as a servicing advance, Silar was guaranteed to
4 make a profitable return on the loan before any direct lender received any payoff on the loan.
5 Blatt and Piskun signed and approved a “Servicing Advance Request” to Silar on or about April
6 16, 2007 and Silar subsequently loaned this money to Compass in return for a very high interest
7 rate (an 18% interest rate), as well as seniority and cross-collateralization on the loan. This loan
8 was a financial boon to Silar, though it was made at substantial cost and harm to Plaintiff Fox
9 Hills, LLC, Plaintiff Eagle Meadows, LLC, and other direct lenders.

10 (g) ***The Gardens Timeshare Loan.***

11 91. The Gardens Timeshare loan originated on March 2, 2004 with an original
12 principal balance of \$5,800,000.00. The principal balance, as of June 4, 2007 was
13 \$3,577,719.33.

14 92. On or about June 4, 2007, Compass sent a communication through the United
15 States mail to the direct lenders of the Gardens Timeshare Loan. In this communication,
16 Compass outlined a “global restructuring” proposal (the “Restructuring Proposal”). After
17 making this Restructuring Proposal, Compass expressed to the direct lenders that the
18 Restructuring Proposal was the best deal the direct lenders could get.

19 93. The Restructuring Proposal amounted to a modification of the underlying
20 collateral of the loan, along with two other loans on the same project. Compass, its managers,
21 and Silar proposed changing and reducing Plaintiff The Gardens TSHR Lenders, LLC’s (“The
22 Gardens, LLC”) and other direct lenders’ deeded positions in the loans, and elevating their own
23 deeded position (one of the three “Gardens” loans is funded 100% by Compass through their
24 purchase of the FTDF). Compass asked Plaintiff The Gardens, LLC and other direct lenders to
25 consider the proposal with a letter outlining the details of the restructuring which contained
26 incomplete and misleading information.

27 94. On or about July 20, 2007, Compass sent the direct lenders another
28 communication elaborating on the terms of the Restructuring Proposal. In a conference call with